

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

DELTA AIR LINES, INC.,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:17-cv-03671-TWT
)	
JOHN DOES 1-25,)	
)	
Defendants.)	

**PLAINTIFF DELTA AIR LINES, INC.’S MOTION FOR LEAVE
TO CONDUCT JOHN DOE DISCOVERY AND MEMORANDUM
OF FACT AND LAW IN SUPPORT THEREOF**

Delta Air Lines, Inc. (“Delta” or “Plaintiff”) files this Motion for Leave to Conduct John Doe Discovery and Memorandum of Fact and Law in Support Thereof (“Motion”) and shows that the requested discovery is necessary for Delta to identify by name and add as parties the John Doe defendants (“Defendants”), whose fraud, counterfeiting, infringement, conspiracy, and other wrongful acts, individually and in combination, have caused and continue to cause legal damages and other substantial and irreparable harm to Delta. Delta’s Proposed Order is attached at Exhibit A.

FACTS

A. Overview of Defendants' Illegal Acts

This lawsuit arises from, among other actionable offenses, wire fraud, counterfeiting, bad faith infringement, and other intentional violations of federal and state law by Defendants. As part of a criminal scheme to defraud members of the public who erroneously believe they are interacting and ultimately contracting with Delta, Defendants have misappropriated and are using without authorization Delta's famous and valuable marks, including, but not limited to, the DELTA Mark, Delta's iconic WIDGET LOGO Mark, and Delta's LIVERY Mark. Specifically, Defendants have placed online and are operating – among other fraudulent and infringing websites – a publicly-accessible website at the domain “DeltaPetTransit.com” that purports to be owned and operated by Delta. Defendants have used this website to advertise bogus pet-related shipping services and to dupe intended victims into believing that they are dealing with Delta and are tendering shipping-related payments and fees directly to Delta.

As Delta's investigation has confirmed, Defendants' fraudulent use of Delta's name and Marks is one portion of a larger criminal scheme pursuant to which victims are induced to pay not only for non-existent shipping services, but also for non-existent dogs “sold” by Defendants or others working in concert with them

through fraudulent “dogs for sale” websites. (*See, e.g., Exhibit B, Better Business Bureau Pet Scam Study, <https://www.bbb.org/puppyscamstudy> at 7 (September 2017)* (“*The thieves almost always ask the victims to pay to ship the pet by air, and they will send victims to bogus web sites of pet transportation companies set up to support the fraud. Pet buyers rarely realize that the transportation sites are often a part of the fraud.*”)). Even after a victim tenders the purchase price for the non-existent dog and pays the initially quoted amount to the non-existent shipping company, Defendants demand still more payments for “mandatory” insurance, vaccines, permits, and other “required” fees. In truth, however, Defendants have no dogs for sale, provide no shipping services, and instead retain as the proceeds of their theft-by-deception all payments made by their various victims.

The many fraudulent websites used by the Defendants and their conspirators to carry out their criminal scheme are identifiable, among other means, by unique content and features, including, but not limited to:

- specific working phone numbers repeatedly used by Defendants;
- specific fanciful phone numbers (*i.e.*, bogus phone numbers with non-existent area codes) that repeatedly appear on a variety of Defendants’ websites;
- contact information appearing on many of Defendants’ websites that includes a particular nonexistent city, street, and zip code;
- the repeated use by Defendants of the same few domain registrars;

- the repeated use by Defendants of two particular foreign domain-by-proxy (privacy) registration services;
- the repeated use by Defendants of the same handful of hosting companies to service Defendants' fraudulent websites; and
- other "digital fingerprints" that create a substantial certainty that a plethora of particular websites have been used and/or are being used by Defendants and their cohorts to carry out their illegal pet scam.

B. The DeltaPetTransit.com Website

Earlier in 2017, by and through a company (WhoisGuard, Inc.) that serves as its clients' "proxy registrant" to hide the respective identities of the actual registrants/domain owners, Defendants registered the domain "DeltaPetTransit.com" through registrar NameCheap, Inc. (WhoisGuard Inc.'s affiliated registrar). (*Exhibit C, DeltaPetTransit.com Registration-Related Information*). After obtaining the "DeltaPetTransit.com" domain, Defendants created and made available at the URL <http://www.DeltaPetTransit.com> a website (the "Counterfeit Website") that purports to be owned and operated by Delta. (*Exhibit D, DeltaPetTransit.com Website*). The Counterfeit Website describes and advertises pet shipment-related services supposedly offered by Delta. Defendants' Counterfeit Website includes a Google-provided phone number – (860) 407-2858 – and an e-mail address – info@DeltaPetTransit.com – through which prospective customers, who believe themselves to be dealing directly with Delta, are invited to contact Defendants

regarding the pet shipment-related services advertised on the Counterfeit Website. (*Id.*). The Counterfeit Website also lists less prominently a second phone number – (554) 616-9926 – that is, in fact, non-existent. (*Id.*). (There is no “554” area code in the United States.) The Counterfeit Website includes a physical address for Defendants – 384 Maple Circle, Simi Valley, Nevada 24757 – that is similarly non-existent. (*Id.*). (There is no such city in Nevada and no such zip code in the United States.) Delta has discovered a number of additional fraudulent pet shipment-related websites and domains owned and controlled by Defendants, including, but not limited to, DeltaPetAirways.com, DeltaPetsWay.com, Delta-Pet-Relocators.us, and PrimetimePetMovers.com. Delta’s investigation and research also revealed that the bogus “dogs for sale” websites created and used by Defendants include newlifepoodles.com, youngchihuahuas.com, lifetimecorgipuppies.com, and mydoodlepuppies.com.

The following accounts by two of Defendants’ many victims (who were still apparently unaware that the entire transaction was an outright scam when they lodged these post-transaction complaints on consumer protection websites) are typical of the experiences of consumers duped by Defendants. These accounts confirm Delta’s own investigation and findings:

I have been waiting on a puppy to be delivered for three days he is now in Chicago IL. [I have] already sent them \$1670 [and] now [they are] saying the puppy can't travel to MO because of a shot unless I gave them another \$2800 or they will hold him for 6 months[.] [I] also paid the seller newlife poodles \$625 for him and travel expenses and I was needing to know what I need to do because [I'm] willing to drive to Chicago get his shots myself and bring him home but the delta pet transit won't allow it[.] They say its against their policies, please help me
Thank you,
[VICTIM NAME REDACTED]

(Exhibit E, PeopleClaim Website, <http://www.peopleclaim.com/complaint-details/delta-pet-transit-5232382> (March 2017)).

I paid a deposit for delivery and purchase of a Toy Teacup Poodle [from Newlifepoodles.com]. They requested a Money Gram and then were going to ship the puppy. Upon my confirmation from a veterinarian that the puppy was healthy, I was to pay the rest of the purchase. I received confirmation that the puppy was being shipped to my home today at 3:15 pm. This morning I received a call and emails from the shipping company [Delta Pet Shipping] that there needed to be an insurance policy for \$1490 purchased to do this transaction. . . . I would like shipment of said puppy or refund of my money.

(Exhibit F, ScamGuard Website, "New Life Poodles.com.")

<https://www.scamguard.com/newlifepoodlescom/> (April 2017)).

DISCUSSION

I. JOHN DOE DISCOVERY – GENERALLY

Federal Rule of Civil Procedure 26(d)(1) permits a party to conduct discovery in advance of the conference of parties required by Fed. R. Civ. P. 26(f), "when

authorized by these rules, by stipulation, or by court order.” Fed. R. Civ. P. 26(d)(1). The federal judiciary has repeatedly recognized the utility and efficacy of using “John Doe” discovery methods to establish the identities of unknown wrongdoers and to defeat their attempts to avoid responsibility for their criminal acts. *See, e.g., Verizon Online Services v. Ralsky*, 203 F. Supp. 2d 601, 609 n.5 (E.D. Va. 2002).

II. DELTA’S PROPOSED DISCOVERY

Delta’s proposed discovery includes the following:

A. Tucows, Inc.

A subpoena to registrar Tucows, Inc. (served in both Canada and upon its U.S. registered agent in Mississippi) regarding domains registered and used by Defendants for their bogus “dogs for sale” websites, including NewLifePoodles.com, YoungChihuahuas.com, and MyDoodlePuppies.com; (*Exhibit G, Proposed Tucows Subpoena*);

B. NameCheap, Inc.

A subpoena to registrar NameCheap, Inc. regarding domains registered and used by Defendants for: (1) their bogus “dogs for sale” websites, including LifetimeCorgiPuppies.com; and (2) their bogus “pet shipping” websites, including DeltaPetTransit.com, DeltaPetAirways.com, DeltaPetsWay.com, Delta-Pet-

Relocators.us, PrimetimePetMovers.com, and DeltaCargo-PetShipping.com;

(Exhibit H, Proposed NameCheap Subpoena);

C. Contact Privacy, Inc.

A subpoena to Contact Privacy, Inc., the proxy registration company owned by or affiliated with Tucows, Inc. and in whose name the domains

NewLifePoodles.com and YoungChihuahuas.com were registered for Defendants;

(Exhibit I, Proposed Contact Privacy Subpoena);

D. WhoisGuard, Inc.

A subpoena to WhoisGuard, Inc., the proxy registration company owned by or affiliated with Namecheap, Inc. and in whose name the domains

DeltaPetTransit.com, LifetimeCorgiPuppies.com, DeltaPetAirways.com,

DeltaPetsWay.com, PrimetimePetMovers.com, and DeltaCargo-PetShipping.com

were registered for Defendants; *(Exhibit J, Proposed WhoisGuard Subpoena (to be served domestically and abroad));*

E. SiteGround.com, Inc. (aka SG Hosting, Inc.)

A subpoena to website hosting company SiteGround.com, Inc. (aka SG Hosting, Inc.), whom Defendants contracted with for hosting services for the

websites appearing at the NewLifePoodles.com and MyDoodlePuppies.com

domains; *(Exhibit K, Proposed Contact SiteGround Subpoena);*

F. Cloudflare, Inc.

A subpoena to website hosting company Cloudflare, Inc., whom the Defendants contracted with for hosting services for the website appearing at the domain DeltaPetTransit.com; (*Exhibit L, Proposed Cloudflare Subpoena*);

G. Hudson Valley Host

A subpoena to website hosting company Hudson Valley Host, whom the Defendants contracted with for hosting services for the website appearing at the domain DeltaPetAirways.com; (*Exhibit M, Proposed Hudson Valley Host Subpoena*);

H. Bandwidth.com CLEC, LLC

A subpoena to Bandwidth.com CLEC, LLC, the telephone number provider associated with (860) 407-2858, one of the contact numbers listed by Defendants on their DeltaPetTransit.com website; (970) 335-8289, one of the contact numbers listed by Defendants on their Delta-Pet-Relocators.us website; and (254) 307-0553, the phone number used by Defendants for voice and text communication with Delta's investigator in relation to his communications regarding the dogs supposedly for sale at NewLifePoodles.com and also used in relation to or appearing at the fraudulent websites at LifeTimeCorgiPuppies.com and MyDoodlePuppies.com; (*Exhibit N, Proposed Bandwidth.com Subpoena*);

I. Google

A subpoena to Google, the preferred e-mail provider for Defendants in relation to the e-mail addresses they use in support of their criminal scheme, including NewLifePoodles@gmail.com, MelanEeter@gmail.com, and MyDoodlePuppies@gmail.com; (*Exhibit O, Proposed Google Subpoena*);

J. Wild West Domains, LLC

A subpoena to registrar Wild West Domains, LLC regarding LandmarkFellowshipChurch.org, a non-pet related domain that, on the basis of the inclusion in its website content of the same fictitious address as appears in many of the Defendants' pet and shipping-related websites (384 Maple Circle Simi Valley Nevada 24757), is necessarily either owned and used by Defendants or otherwise somehow affiliated or related to Defendants; (*Exhibit P, Proposed Wild West Domains Subpoena*);

K. The Kroger Company (King Soopers)

A subpoena to The Kroger Company dba "King Soopers" (the supermarket chain at whose in-store Western Union office in Colorado Springs, Colorado Defendants retrieved a pet-related wire payment sent by Delta's investigator) for any existing security video that may show Defendants' money-runner picking up the payment; (*Exhibit Q, King Soopers Subpoena*);

L. Western Union

A subpoena to Western Union regarding all transactions involving the people designated by name by Defendants to receive the pet-related payments sent or to be sent by Delta's investigator); (*Exhibit R, Proposed Western Union Subpoena*);

M. MoneyGram

A subpoena to MoneyGram (the money transfer service that Delta's investigator was initially directed by Defendants to use) regarding all transactions involving the people designated by name by Defendants to receive the pet-related payments sent or to be sent by Delta's investigator. (*Exhibit S, Proposed MoneyGram Subpoena*); and

N. Walmart

A subpoena to Walmart (at which Delta's investigator was initially directed by Defendants to use the "Walmart to Walmart Money Transfer Service" to send payment to Little Rock, Arkansas) regarding all transactions involving the people designated by name by Defendants to receive the pet-related payments sent or to be sent by Delta's investigator. (*Exhibit T, Proposed Walmart Subpoena*).

CONCLUSION

Delta respectfully requests that this Court execute its Proposed Order (Exhibit A) and allow Delta to propound the John Doe discovery detailed above.

This 24th day of October, 2017.

WELLBORN & WALLACE, LLC

/s/ Paul F. Wellborn III

Paul F. Wellborn III

Georgia Bar No. 746720

Kelly O. Wallace

Georgia Bar No. 734166

Attorneys for Plaintiff Delta Air Lines, Inc.

1175 Peachtree St. NE
100 Colony Square, Suite 300
Atlanta, Georgia 30361

Phone: (404) 815-9595
Fax: (404) 815-9957
E-mail: pete@wellbornlaw.com
kelly@wellbornlaw.com

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RULE 7.1 CERTIFICATE OF
COMPLIANCE WITH LOCAL RULE 5.1

This certifies that the foregoing Complaint for Injunction and Damages was prepared using 14-point Times New Roman font and accordingly complies with Local Rule 5.1. This certificate is given in compliance with Local Rule 7.1(D).

This 24th day of October, 2017.

WELLBORN & WALLACE, LLC

/s/ Paul F. Wellborn III

Paul F. Wellborn III

Georgia Bar No. 746720

Kelly O. Wallace

Georgia Bar No. 734166

Attorneys for Plaintiff Delta Air Lines, Inc.

1175 Peachtree St. NE
100 Colony Square, Suite 300
Atlanta, Georgia 30361

Phone: (404) 815-9595
Fax: (404) 815-9957
E-mail: pete@wellbornlaw.com
kelly@wellbornlaw.com